



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/593,949

10/12/2007

Chris G. Dixon

003006-002548

5444

30565

7590

03/30/2011

Woodard, Emhardt, Moriarty, McNett & Henry LLP
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

EXAMINER

SNYDER, MELISSA A

ART UNIT

PAPER NUMBER

3763

NOTIFICATION DATE

DELIVERY MODE

03/30/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketDept@uspatent.com

Office Action Summary

Application No.

10/593,949

Applicant(s)

DIXON ET AL.

Examiner

Melissa A. Snyder

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12192006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, and 6-11 are rejected under 35 U.S.C. 102(e) as being anticipated by US 4,940,459, issued to Noce.

Noce discloses a high pressure dispenser (fig 1) for the application of a medicinal mixture to a desired location, the dispenser comprising: a handle 22 a chamber 20, that receives a medicinal mixture coupled to the handle; a threaded region (fig 2) within the handle; a threaded rod 26 in threaded engagement with the threaded region (fig 2); and a knob 46 coupled to the threaded rod; the dispenser characterized in that: the dispenser includes at least one insert-molded component, wherein the at least one insert-molded component includes at least one of a threaded insert 28 providing the threaded region insert-molded into the handle and a threaded rod insert-molded into the knob (col 4 line 31-40.)

Regarding claim 2, Noce discloses the dispenser of claim 1, characterized in that the threaded insert (120) includes metal or plastic (col 4 lines 31-40.)

Art Unit: 3763

Regarding claim 4, Noce discloses the dispenser of claim 1, characterized in that the threaded rod (14) includes metal. (col 4 lines 31-40.)

Regarding claim 6, Noce discloses the dispenser of claim 1, characterized in that an exterior surface of the chamber 22 comprises at least one notch (opening created by 64) dimensioned to engage with at least one corresponding tab 26 on an exterior surface of the handle.

Regarding claim 7, the dispenser of claim 1, characterized in that the handle (16) comprises four exterior longitudinal sides (fig 2).

Regarding claim 8, Noce discloses the dispenser of claim 1, characterized in that the knob (20) has an axial length approximately equal to or greater than the diameter of the knob (fig 2).

Regarding claim 9, Noce disclose the dispenser of claim 1, characterized in that the knob (20) has at least one longitudinal rectangular cavity (fig 2).

Regarding claim 10, Noce discloses the dispenser of claim I, characterized in that the chamber (18) comprises an interior cylindrical surface (fig 2) and a nozzle (44) in fluid communication, and the interior of the chamber has a concave surface in between the interior cylindrical surface and the nozzle (fig 2.)

Regarding claim 11, Noce discloses the dispenser of claim 1, characterized in that the threaded rod is coupled to a piston 24, the piston is insert molded into the threaded rod (col 4 lines 31-40.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noce. Regarding claim 5, Noce does not disclose the dispenser of claim 1, characterized in that an exterior surface of the chamber comprises at least one tab dimensioned to

Art Unit: 3763

engage with at least one corresponding notch on an exterior surface of the handle. However, he discloses the opposite configure (as disclosed in rejection of claim 6 above.) At the time of applicant's invention, it would have been obvious to one ordinary skill in the art to provide the claimed configuration, as this is simply a reversal of parts, and provides no criticality over the opposite claimed configuration.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,940,459 to Noce in view of 6,802,824 to Mickley et al.

Noce discloses applicant's basic inventive concept of a dispenser as disclosed above, including a plastic handle, but does not disclose the handle over-molded with soft rubber. Mickley teaches this feature to be old in the medical devices art (8). At the time of applicant's invention, it would have been obvious to one of ordinary sill in the art to provided rubber over-molded onto the plastic handle to provide a better grip and for increased operator control

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. Snyder whose telephone number is (571)272-6486. The examiner can normally be reached on Monday through Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. S./
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763